

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4396 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M/s. JYOTI LTD.

Versus

THE REGIONAL PROVIDENT FUND COMMISSIONER & ANR.

Appearance:

MR SM MAZGAONKER for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:27/09/96

C.A.V. JUDGMENT

Heard learned counsel for the parties. The petitioner has challenged the decision given by respondent No.2 in exercise of its power u/s.19(A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, (hereinafter referred to as the 'Act 1952'), declining to accept the contention of the petitioner-company that its establishment of Ceramic division is entitled to infancy benefits u/s.16(1)(b) of

the Act 1952.

2. The petitioner, M/s.Jyoti Ltd. was floated in the year 1943. It was an existing company within the meaning of Companies' Act 1956. The company has established its factory in industrial area, Baroda, in which heavy engineering products such as pumps, hydro-electric generating sets, rotating machines, switch gears, switch boards, relays, etc. are being manufactured. In the year 1975, the petitioner-company started its establishment for manufacturing and marketing of industrial Ceramic products at G.I.D.C. Estate, Kalol, Dist. Panchmahals. The products which are being manufactured at the aforesaid establishment of the petitioner are such as Arc Chute, Ceramic Tumbling & Deburring Media, Chemical Procelain, Electro Porcelain, fuse bodies, bushes and insulators, Refractories, Strainer cores and combustion boats, Special Insulating Pieces, Textile Guides: Hard Porcelain and High Alumina Guides, Tower Packings: Raschching Rings, Saddles, Pall Rings, and Alumdum Balls of various sizes. The respondent No.1, under its communication dated 4th February 1980 called upon the petitioner-company to extend benefits of the Act 1952 to its employees working in its Ceramic division. The respondent No.1 has considered the Ceramic division of the petitioner-company as a part and parcel of its establishment at Baroda and is therefore covered under the provisions of Section 2(A) of the Act 1952. Thereafter proceedings for determination of the amount of provident fund and other amount under different heads payable under the Act 1952 were initiated by respondent No.1 u/s.7(A) of the aforesaid Act. The petitioner was called upon under summons dated 3rd May 1980 to appear before the said authority. In response to the summons, the petitioner-company raised a preliminary objection as to applicability of the Act 1952 to its establishment at Kalol, Dist. Panchmahals. The contention was made that Ceramic division is an independent and a separate establishment and not a branch or department of its establishment at Baroda and as such, it is entitled to infancy protection as provided u/s.16(1)(b) of the Act 1952. This preliminary objection raised by the petitioner could not find favour of respondent No.1 and under its order dated 23rd March 1983, the same was rejected.

3. The petitioner challenged the aforesaid order of respondent No.1 before this Court by filing Special Civil Application No.4317 of 1983. This Special Civil Application came to be withdrawn by the petitioner on the

court's observation that it is desirous of making a representation with regard to the subject matter therein to the Central Government, the respondent No.2 herein u/s.19A of the Act 1952. Accordingly, the petitioner made a representation to the respondent No.2 on 15th October 1983. The respondent No.2 has decided that the establishment at Kalol, of the petitioner, is part and parcel of its establishment at Baroda and therefore was not entitled to infancy benefits as provided u/s.16(1)(A) of the Act 1952. Hence this Special Civil Application before this Court.

4. The learned counsel for the petitioner reiterated all those submissions which have been made by the petitioner before both, respondents No.1 and 2. In support of his contention, the learned counsel for the petitioner in addition to the authorities which have been considered by the lower authorities, cited two more decisions, namely, decision of Supreme Court in the case of M/s. Alloys Steel Project v. Workmen, reported in 1971(1) SCC 536, and the decision of the Bombay High Court in Special Civil Application No.198 of 1978 decided on 3.8.81. A typed copy of the said decision has been placed before this Court by the counsel for the petitioner.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.

6. The decision of the Bombay High Court is distinguishable on the facts. In that case, the Court has given finding that to attract the provisions of Section 2A of the Act 1952, it is necessary that the unit must be described or treated as branch or department of the main establishment. Such branch or department cannot have separate existence but is purely dependant on the main establishment. It has further been held that the branch or the department, even if a factory, is merely subsidiary, minor or feeding industry and is started for the purpose of running one of the primary industries, then such feeding industry can be well described as branch or department of the primary industry. In the case which was for consideration before the Bombay High Court, the unit was not found to be feeding industry of the primary industry.

7. The respondent No.1 has given a finding of fact in its order that the Ceramic unit has been started by the petitioner as feeder unit to the primary establishment. In the present case, the establishment of

the petitioner-company at Kalol, Dist. Panchmahal, was, as stated earlier, found to be feeder unit of the company, and the same therefore held to be branch of the department of the primary establishment.

8. Both the authorities below, after taking into consideration the facts, namely, (i) in the Memorandum and Articles of Association of the petitioner-company, there is a provision enabling the company to set up a factory for manufacture of products now being manufactured at their own unit and accordingly the company has extended its activities by starting a Ceramic division at Kalol, (ii) the company had applied for industrial licence in respect of Ceramic unit at Kalol and in the said application it has been stated that the Asbestos Arc Chute will be made for Air Circuit breakers, (iii) Steatite Insulators will be made for high frequency fuses required by it as well as for sale in the open market, (iv) the finances have been arranged for this Ceramic division at Kalol from the petitioner's internal sources and bank loans. (iv) the petitioner-company has acquired a plot for setting up a Ceramic division and it has paid amount for the plot, (v) in the licence which has been issued by the Chief Inspector of factories, it is stated that the said licence is issued in the name of M/s.Jyoti Limited, i.e. Ceramic division, (vi) though there is no transferability of the employees, but employees from the company from its primary establishment with special managerial and technical skills were deployed at its Ceramic division at Kalol; held that the said Ceramic unit has been started as a feeder unit of the Company and is a department or division of the Company. Therefore the Company is not entitled to infancy protection of 3/5 years as contemplated under Section 16(1)(b) of the Act 1952. On the basis of evidence which has been produced on record, the first authority concluded that there is a unity of ownership unity of finance and unity of management and control and general unity of purpose. The functional integrity between primary establishment and Ceramic division at Kalol has also been accepted. The authority u/s.19(A) of the Act 1952 has considered that there is a common balance sheet for both the units, the new division (Ceramic division) mentions the establishment as its head office. 37.5 % of the sales of products of Ceramic division were to the establishment which shows that the new division is depending upon the establishment for its existence. The said authority has held that management and control of both the units lies with the same body of persons. Both the units are owned by a company and as such the policy decision has to be taken by the Board of

Directors, although execution might be left to subordinate officers. The Resolution of the Board of Directors under which the administrative officer, in the Ceramic division has been authorized to discharge powers and duty with respect to the management and affairs of the factory located at Kalol. Though this Resolution gives out that the administrative officer has to discharge powers and duties with respect to the management and affairs of Ceramic division of the company, but directions were given by the same Board of Directors and overall control does lie with the Board of Directors. The authority u/s.19(A) of the Act 1952, on the basis of that material has recorded a finding of fact that there is unity of management, supervision and control in the establishments. The unity of purpose, unity of finance, unity of ownership and functional integration has also been accepted by the authority u/s.19A of this act. In the case of Associated Cement Companies Ltd. v. their Workmen (supra) the Supreme Court has laid down certain tests to be held for the purpose of determining that whether the unit in question is a department or branch of the primary establishment. These are the unity of management, control, finances etc. and if those tests are satisfied then the establishment will be considered to be branch or department of the primary establishment and as such, will not be eligible for infancy benefits as provided u/s.16(1)(B) of the Act 1952. The authorities u/s.19(A) of this Act have considered some other decisions of this Court as well as Bombay High Court decision to reach to conclusion that the Ceramic division at Kalol is the department or branch of the primary establishment.

9. The learned counsel for the petitioner placed reliance on the decision of Supreme Court in the case of M/s. Alloys Steel Project v. Workmen, reported in 1971 (1) SCC 536. That decision of Supreme Court was under the Payment of Bonus Act, 1965. The provisions of the Act under consideration in the aforesaid decision are not pari-materia with the provisions under consideration in the present case. Proviso to Section 3 of the Bonus Act was under consideration before the Supreme Court in the case of M/s. Alloys Steel Project v. Workmen (supra) which makes it clear that wherever in accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under the Act for that year unless such department or undertaking or branch was, immediately before the

commencement of that accounting year, treated as a part of the establishment for the purpose of computation of the bonus. The decision on which reliance has been placed by the learned counsel for the petitioner is of little help to him. The Act 1952 is a beneficial piece of social welfare legislation aimed at promoting and securing the well being of employees and the Court will not give narrow interpretation which will have effect of defeating the very object and purpose of the Act. It aims not to lay down any one test as an absolute and invariable test for all the cases. The real purpose of the test aforesaid as laid down by the Supreme Court in the case of Associated Cement Ltd. v. Workmen (supra) and the decision of this Court, is to find out true relation between parts, branches or units. If, on the basis of material produced on record, applying the tests, if in the true relation they constitute one integrated whole, the establishment is one. It is how that relation between units will be judged will depend upon the facts proved. The authorities below have kept in mind the aforesaid distinction and requirement of law. It is not necessary that all the tests should necessarily be satisfied in each and every case. The authority u/s.19A of the Act, after considering the facts and circumstances of the case and evidence and material produced on record has held that the test of unity of management, control and supervision, unity of finance and functional integrity are satisfied in the case, which decision does not call for any interference of this Court. It cannot be said that the findings recorded are perverse.

10. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. No order as to costs.

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